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Judicial Tenure Commission

February 13, 2012

Corbin Davis
Clerk of the Michigan Supreme Court
925 W. Ottawa Street
Lansing, MI 48913



Re: MSC ADM File No. 2005-11
Proposed Amendment(s) to Code of Judicial Conduct

Dear Mr. Davis,

The amendments the Court is considering regarding the Code of Judicial Conduct (issued November 28, 2011), as did the proposal the Court considered a year earlier (issued November 23, 2010), focus on fundraising activities that judges may undertake. Disengaging judges entirely from the ethically-daunting area of fundraising would be the ideal rule, but not a practical one. The Commission hopes that the Court will ultimately adopt language that will clarify the parameters of permitted activity.

Rather than adopt either of the proposals the Court has published for comment, the Commission suggests that the Court look at the federal counterpart to this canon in the Code of Conduct for United States Judges. This rule is far better in that it wholly disengages a judge from the unseemly and ethically-fraught role of fundraiser.

Moreover, it includes a provision allowing judges to solicit family members and other judges, as long as they have no supervisory or appellate role over the solicitees. This is a provision that is lacking in the current Michigan Code, and one that would be a welcome addition. Additionally, the federal code's use of the terminology "should not personally" participate, as opposed to the Michigan language of "individually" doing so, is a more accurate description of the proscribed conduct.

The Commission offers the federal language below (including the commentary to the federal canon) as an alternative to those the Court is currently circulating:

(B) *Civic and Charitable Activities.* A judge may participate in and serve as an officer, director, trustee, or nonlegal advisor of a nonprofit civic, charitable, educational, religious, or social organization, subject to the following limitations:

- (1) A judge should not serve if it is likely that the organization will either be engaged in proceedings that would ordinarily come before the judge or be regularly engaged in adversary proceedings in any court.
- (2) A judge should not give investment advice to such an organization but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

(C) *Fund Raising.* A judge may assist nonprofit law-related, civic, charitable, educational, religious, or social organizations in planning fund-raising activities and may be listed as an officer, director, or trustee. A judge may solicit funds for such an organization from judges over whom the judge does not exercise supervisory or appellate authority and from members of the judge's family. Otherwise, a judge should not personally participate in fund-raising activities, solicit funds for any organization, or use or permit the use of the prestige of judicial office for that purpose. A judge should not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.

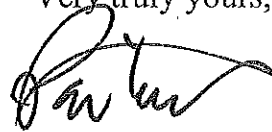
COMMENTARY

Canon 4C. A judge may attend fund-raising events of law-related and other organizations although the judge may not be a speaker, a guest of honor, or featured on the program of such an event. Use of a judge's name, position in the organization, and judicial designation on an organization's letterhead, including when used for fund raising or soliciting members, does not violate Canon 4C if comparable information and designations are listed for others.

Corbin Davis
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The Commission appreciates the Court's efforts to make the Canons more understandable for everyone and thanks the Court for the opportunity to present its views on these topics.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul J. Fischer", with a stylized flourish at the end.

Paul J. Fischer
Executive Director and
General Counsel

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